IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

OP.No. 17023 of 2002(B)

PETITIONER:

DR.M.RAGHAVAN NAICKER,
LECTURER IN NEUROLOGY, NEUROLOGY DEPARTMENT,
MEDICAL COLLEGE, THIRUVANANTHAPURAM.

BY ADV.SRI.ELVIN PETER P.J,
SRI.S.RAMESH,
SRI.P.N.SANTHOSH,
SRI.S.D.ASOKAN.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY TO GOVERNMENT, HEALTH &
   FAMILY WELFARE DEPARTMENT, GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF MEDICAL EDUCATION,**
   THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. T.B. RAMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. 29023/2002 IN O.P. NO. 17023/2002

DISMISSED

16/07/2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. F1/19343/97 DTD. 13/11/1997 ISSUED BY THE R.2.

EXT.P.2: COPY OF THE ORDER NO. F1/18009/98/DME. DT. 3012/1998 ISSUED BY THE R.2.

EXT.P.3: RELEVANT EXTRACT OF THE PROSPECTUS FOR ADMISSION TO P.G. SUPER SPECIALITY COURSES - 1998.

EXT.P.4: COPY OF THE ORDER NO. F1/26175/99/DME. DT. 27/11/1999 ISSUED BY THE R.2.

EXT.P.5: COPY OF THE PROVISIONAL CERTIFICATE OF D.M. (NEUROLOGY) OBTAINED BY THE PETITIONER DT. 01/04/2002.

EXT.P.6: COPY OF THE ORDER G.O. (P). NO. 455/76/HEALTH DTD. 22ND DECEMBER 1976.

EXT.P.7: RELEVANT EXTRACT OF THE MINIMUM QUALIFICATIONS FOR TEACHERS IN MEDICAL INSTITUTIONS REGULATIONS, 1998 ISSUED BY THE MEDICAL COUNCIL OF INDIA.

EXT.P.8: COPY OF THE NOTIFICATION DTD. 19/01/1999 ISSUED BY THE SREE CHITRA TIRUNAL INSTITUTE FOR MEDICAL SCIENCES & TECHNOLOGY.

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.NO.17023 of 2002

Dated this the 16th day of July, 2007

JUDGMENT

The petitioner states that he is the senior most Lecturer in the Department of Neurology in the Government Medical College. He is an aspirant to the post of Reader/Assistant Professor as against vacancies which were available as on 1.4.2002. On that date he obtained the qualification of D.M.(Neurology). Exhibit P6 government order prescribes D.M.(Neurology) after M.D in Medicine as the qualification for promotion as Reader/Assistant Professor, while the petitioner obtained D.M.(Neurology), after having M.D in Paediatrics, though he was working in the Department of Neurology. The IMC Regulation (Exhibit P7) would show that promotions from Assistant Professor/Lecturer to Reader/Associate Professor and Professor are on the basis of the qualification of D.M.(Neurology). Exhibit P8 evidences that for the category of Assistant Professor in Neurology in the SCTIMS & T, the qualification is D.M or MCH in Neurology. Exhibit P3 will show that candidates with M.D in General Medicine or in Paediatrics could apply for D.M in Neurology. The petitioner obtained admission for D.M (Neurology) in the Lecturer quota.

2. On the basis of the aforesaid materials, it is admitted to be pointed out on behalf of the petitioner that insistence that M.D qualification should be in Medicine for one who possessing D.M (Neurology) to be appointed as Assistant Professor in terms of Exhibit P6 amounts to hostile discrimination on the face of Part III of the Constitution of India. Based on the aforesaid materials, while I do not deem it appropriate for the writ court to sit in judgment, at the first instance, on an evaluation of the qualifications and reach at a decision as to whether it is a case of under inclusiveness or over inclusiveness in terms of Articles 14 or 16 of the Constitution of India, it is necessary that the Government considers the apparent disparity shown between the IMC Regulation, the qualifications prescribed by another leading institution as evidenced by Exhibit P8 and in Exhibit P2 Government order. It cannot also be ignored that even for inservice candidates aspiring for D.M.(Neurology), M.D. (General Medicine) and M.D.(Paediatrics) are alternative qualifications.

3. In such circumstances, without expressing anything on merit, this Original Petition is disposed of directing that the case of the petitioner that he was entitled to be considered for promotion with effect from 1.4.2002 as Assistant Professor (Neurology) will be

taken up for consideration after first determining whether Exhibit P2 prescriptions as the qualification for such promotion requires any modification in the view of the Government having regard to all facts and factors. The fact that the petitioner has been given subsequent promotion would obviously be an indicator to decide the question as to why such a scenario should not be permitted to prevail from the date of occurrence of vacancy or the date on which the petitioner acquired the qualification whichever is later. A decision as aforesaid shall be taken within an outer time limit of six months from the date of receipt of a copy of this judgment. All questions including the *vires* of the impugned order are left open.

THOTTATHIL B.RADHAKRISHNAN,
JUDGE

vgs.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.NO.17023 OF 2002

J U D G M E N T

16.07.2007